

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
SPECIAL CIVIL APPLICATION No. 5881 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be  
allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the  
fair copy of the judgment ?

4 Whether this case involves a substantial  
question of law as to the interpretation  
of the constitution of India, 1950 or any  
order made thereunder ?

5 Whether it is to be circulated to the  
civil judge ?

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VAPI INDUSTRIES ASSOCIATION  
Versus  
STATE OF GUJARAT & OTHERS

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Appearance :

MR DEVANG NANAVATI with MR. SANJIV A DAVE for NANAVATI & NANAVATI  
for Petitioner.

MS KRINA CALLA, ASST. GOVERNMENT PLEADER for Respondent No. 1,

MR YF MEHTA for Respondent No.2

MR MD PANDYA for Respondent No.3

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 03/08/2007

ORAL JUDGMENT

In the present petition, the petitioner Vapi Industries Association has challenged communications annexed at Annexure 'A' collectively.

Short controversy involved in this petition is with respect to the retrospective increase in electricity duty effected by the State Government on the electricity consumption by GIDC in particular in this case for the purpose of providing certain essential services in the Vapi Industrial area of the GIDC.

It is the case of the petitioner that GIDC is required to provide certain essential services such as water, drainage, sewerage etc in the GIDC Industrial area at Vapi and GIDC in turn collects charges including water charges, electricity charges etc. Till the year 1989, the State Government permitted GEB to collect electricity charges from the GIDC along with electricity duty at the rate of 20%. However, on an audit objection, such electricity duty was sought to be increased to 60%.

Apparently, the GIDC wanted to shift this additional burden on the industrialists functioning in the industrial estate. It appears that on representation of different industries, the State Government decided to reduce electricity duty to 20% and 10% for high tension and low tension supplies respectively. This, however, was done in the year 1991. From the record it appears that the GIDC has already paid up the differential duty for the period between 1989 and 1991 to GEB and, therefore, the only question surviving is with respect to the differential rate of duty for the period 1983 to

1989.

After some correspondence between the GIDC and the State Government, since the State Government insisted that earlier collection of electricity duty at 20% was erroneous and GIDC also would have to bear the electricity duty at 60%, GIDC issued a communication dated 16.05.96 to the petitioner Association stating interalia that on account of such modification, GIDC would have to pay additional amount of Rs.94.05 lakhs to GEB, GIDC would therefore have to increase the water rates considering the additional burden. Along with the said communication, GIDC has also annexed a letter received from the GEB being letter dated 22.11.94. These are the communications which the petitioner has challenged in this petition.

Though in the petition several contentions are raised regarding the legality of the stand of the Government in seeking to raise the electricity duty to 60% and that too with retrospective effect, having heard the learned advocates for the parties, I find that it is not necessary for this Court to decide the said issue in this petition.

Prima facie I find that the fixation of electricity duty by the government and demand of the same at a higher rate from GIDC is an issue between the Government and GIDC, and, perhaps, the petitioner would have no *locus standie* to challenge the said decision. However, the factual aspects arising in this petition are somewhat peculiar. It is not in dispute that for the entire period from 1983 to 1989, different industries

functioning in GIDC Industrial area, Vapi and/or the Association of such industries periodically paid up their dues and GIDC collected water charges and electricity charges demanded by GIDC for supplying the essential service such as common lights, sewerage, drainage, water etc. Individual industries would have borne proportionate burden there of depending on its size or consumption. More than 10 years thereafter, GIDC proposes to increase the water rates to recover the additional demand of Rs.94 lakhs made by GEB. I find that passing on such a burden to the industries in the manner in which GIDC proposed, vide its impugned communication dated 16.05.96 is neither practicable nor equitable. It would thus mean that long after the individual industries availed of the services GIDC is attempting to recover the differential rate of duty by uniformly increasing the water charges. Obviously, such a burden would fall on the existing industries. From 1983 to 1989, several hands would have changed and ownership of industries would also have changed. Thus, in some cases, the industries which had never consumed such services would have to bear the additional burden in the form of increased water charges to compensate the GIDC for increased electricity duty. Consumption of different industries would also be different depending upon its size and scale of activities. At this distant point of time, therefore, I do not find that the respondents can be permitted to recover the differential rate of electricity duty, which apparently would not have been passed on by the industries to its consumers. During the pendency of this petition, the recovery was stayed.

Thus, only on this peculiar factual parameter, I am

inclined to quash the communication dated 16.05.96 which is at page 18 in the compilation of this petition, and keep the question of legality of increase in electricity duty open.

I would also recommend the State Government to reconsider the question, in the light of the representation of GIDC a copy of which is at page 83 of the compilation of this petition, whether such additional burden should be borne by the GIDC in the peculiar facts of the case. Ultimately, if the decision is adverse to GIDC, it would be open for it to challenge such decision as well as the action of increase in electricity duty in accordance with.

With these directions, the petition is disposed of.

Rule made absolutely to the above extent. No order as to costs.

[AKIL KURESHI, J.]

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